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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
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10 CLEVELAND ROLLARSON,

Case No. 1:24-cv-01527-SAB-HC

11 Petitioner,

FINDINGS AND RECOMMENDATION
RECOMMENDING DISMISSAL OF
PETITION FOR WRIT OF HABEAS
CORPUS

12 v.

13 ON HABEAS CORPUS,

ORDER DIRECTING CLERK OF COURT
TO RANDOMLY ASSIGN DISTRICT
JUDGE

14 Respondent.

15
16 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus
17 pursuant to 28 U.S.C. § 2254.

18 **I.**

19 **BACKGROUND**

20 In 1986, Petitioner was convicted of first-degree murder, first-degree robbery, and
21 kidnapping. Petitioner was sentenced to an imprisonment term of life without the possibility of
22 parole. (ECF No. 1 at 1.¹) In 2022, Petitioner filed a petition for resentencing in the Merced
23 County Superior Court, which denied the petition. (*Id.* at 3–4, 11.) Petitioner appealed, and the
24 California Court of Appeal, Fifth Appellate District affirmed the denial on November 6, 2023.
25 (*Id.* at 11, 20, 27, 28.)

26 On December 16, 2024, Petitioner filed the instant petition for writ of habeas corpus,
27 alleging that a “state impediment” occurred when his attorney did not advise Petitioner that his

28 ¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

1 resentencing appeal was denied and thus, Petitioner was unable to timely file a petition for
2 review in the California Supreme Court. (ECF No. 1 at 5.) Petitioner requests that he “be
3 allow[ed] to have [his] case sent back to the Superior Court for review.” (*Id.* at 15.)

4 **II.**

5 **DISCUSSION**

6 Rule 4 of the Rules Governing Section 2254 Cases (“Habeas Rules”) requires preliminary
7 review of a habeas petition and allows a district court to dismiss a petition before the respondent
8 is ordered to file a response, if it “plainly appears from the petition and any attached exhibits that
9 the petitioner is not entitled to relief in the district court.” Rule 4, Rules Governing Section 2254
10 Cases in the United States District Courts, 28 U.S.C. foll. § 2254.

11 By statute, federal courts “shall entertain an application for a writ of habeas corpus in
12 behalf of a person in custody pursuant to the judgment of a State court only on the ground that he
13 is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
14 § 2254(a). “[T]he second use of ‘in custody’ in the statute requires literally that the person
15 applying for the writ is contending that he is ‘in custody’ in violation of *the Constitution or other*
16 *federal laws.*” Bailey v. Hill, 599 F.3d 976, 979 (9th Cir. 2010) (emphasis added). See Dickerson
17 v. United States, 530 U.S. 428, 439 n.3 (2000).

18 To the extent Petitioner asserts that he is entitled to resentencing relief, that is an issue of
19 state law and errors of state law generally do not warrant federal habeas corpus relief. See
20 Wilson v. Corcoran, 562 U.S. 1, 5 (2010) (per curiam) (“[I]t is only noncompliance with federal
21 law that renders a State’s criminal judgment susceptible to collateral attack in the federal
22 courts.”); Estelle v. McGuire, 502 U.S. 62, 67–68 (1991) (“We have stated many times that
23 ‘federal habeas corpus relief does not lie for errors of state law.’ Today, we reemphasize that it is
24 not the province of a federal habeas court to reexamine state-court determinations on state-law
25 questions.” (citations omitted)).

26 To the extent Petitioner seeks federal habeas relief based on ineffective assistance of
27 counsel for the alleged failure to advise Petitioner of the California Court of Appeal’s
28 disposition, the Court finds that such a claim is not cognizable because “[t]here is no

1 constitutional right to an attorney in state post-conviction proceedings. Consequently, a
2 petitioner cannot claim constitutionally ineffective assistance of counsel in such proceedings.”
3 Coleman v. Thompson, 501 U.S. 722, 752 (1991) (citations omitted). See 28 U.S.C. § 2254(i)
4 (“The ineffectiveness or incompetence of counsel during Federal or State collateral post-
5 conviction proceedings shall not be a ground for relief in a proceeding arising under section
6 2254.”); Nguyen v. Acevedo, No. 2:23-cv-01086-DAD-JDP, 2024 WL 4564248, at *2 (E.D. Cal.
7 Oct. 24, 2024) (“district courts in this circuit have routinely found that there is no federal
8 constitutional right to counsel in resentencing proceedings”); Williams v. Martinez, No. 2:22-cv-
9 1593-DAD-KJN, 2023 WL 4748560, at *6 (E.D. Cal. July 25, 2023) (“Resentencing proceedings
10 under California Penal Code § 1170.95 are the type of postconviction proceedings in which there
11 is no federal constitutional right to counsel.”), report and recommendation adopted, 2023 WL
12 8097024 (E.D. Cal. Nov. 21, 2023).

III.

RECOMMENDATION & ORDER

15 Based on the foregoing, the Court HEREBY RECOMMENDS that the petition for writ of
16 habeas corpus be DISMISSED.

17 Further, the Clerk of Court is DIRECTED to randomly assign this action to a District
18 Judge.

19 This Findings and Recommendation is submitted to the assigned United States District
20 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local
21 Rules of Practice for the United States District Court, Eastern District of California. Within
22 **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may file
23 written objections with the Court, **limited to fifteen (15) pages in length, including any**
24 **exhibits.** Such a document should be captioned “Objections to Magistrate Judge’s Findings and
25 Recommendation.” The assigned United States District Court Judge will then review the
26 Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that
27 failure to file objections within the specified time may waive the right to appeal the District
28 ///

1 Court's order. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.
2 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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4 IT IS SO ORDERED.
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Dated: January 23, 2025


STANLEY A. BOONE
United States Magistrate Judge

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